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CLERK U.S. DISTRICT COURT DISTRICT OF ARIZONA	
BY	DEPUTY

Roy Wayne Tyler  
4502 Harbor Vista Blvd  
Klamath Falls, Oregon 97601  
(928) 941-1079

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Roy Wayne Tyler, Plaintiff,

CASE NUMBER:

v.

**CV 17-0440 TUC DCB**

United States of America, Defendant.

**COMPLAINT FOR DAMAGES UNDER THE FEDERAL TORT CLAIMS ACT**

**INTRODUCTION**

1. This is an action against the Defendant United States of America under the Federal Tort Claims Act, (sections 1346(b) and 2671-2680, title 28, United States Code for negligence and professional malpractice, relating to medical care provided to Plaintiff Tyler by the Department of Veterans Affairs at the Southern Arizona VA Health Care System, Tucson, Arizona.
2. The claims herein are brought against the Defendant pursuant to the Federal Tort Claims Act (28 U.S.C. §2671, *et seq.*) and 28 U.S.C. §1346(b)(1), for money damages as compensation for personal injuries caused by the Defendant's negligence.

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2 3. Plaintiff Tyler has fully complied with the provisions of 28 U.S.C. §  
3 2675 of the Federal Tort Claims Act. This suit has been timely filed, Plaintiff  
4 Tyler is now filing this Complaint after receiving the Department of Veterans  
5 Affairs' notice final denial of administrative tort claim of Roy and Alberta Tyler  
6 which was forwarded by Mr. Walter A. Oleniewski, Attorney at Law who  
7 represented Mr. Tyler for the Tort claim. *Claim Denial Letter attached as*  
8 *Exhibit 1*  
9

10 **PARTIES, JURISDICTION AND VENUE**

11 4. Plaintiff Tyler is, and at all times relevant hereto was a resident of  
12 Greenlee County, Arizona.

13 5. Defendant United States of America, through its agency, the  
14 Department of Veterans Affairs, operates the Southern Arizona VA Health Care  
15 System located at Tucson, Arizona and the Safford VA Clinic located in Safford,  
16 Arizona. The cause of action arose from these locations  
17

18 6. Defendant United States of America, including its directors, officers,  
19 operators, administrators, employees, agents, and staff at the Southern Arizona  
20 VA Health Care System located at Tucson, Arizona and the Safford VA Clinic  
21 located in Safford, Arizona are hereinafter collectively referred to as "VA  
22 Medical Centers."  
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24 7. At all times relevant to this Complaint, the VA Medical Centers held  
25 themselves out to the Plaintiff and eligible beneficiaries, as a provider of high  
26 quality health care services, with the expertise necessary to maintain the health  
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1 and safety of patients like the Plaintiff.

2 8. At all times relevant to this Complaint, the directors, officers, operators,  
3 administrators, employees, agents, and staff were employed by and/or acting on  
4 behalf of the Defendant. Furthermore, the Defendant is responsible for the  
5 negligent acts of their employees and agents under respondent superior  
6

7 9. Jurisdiction is proper under 28 U.S.C. § 1346(b)(1).  
8

9 10. Venue is proper under 28 U.S.C. §1402(b) in that all, or a substantial  
10 part of the acts and omissions forming the basis of these claims occurred in the  
11 District of Arizona  
12

13 **FACTUAL ALLEGATIONS**

14 11. On or about June 5, 2012, Plaintiff Tyler, a 65-year-old Viet Nam  
15 veteran fell off a ladder in Clifton, Arizona. Initial emergency room treatment  
16 at the Mt. Graham Regional Medical Ctr., Safford, AZ revealed a bimalleolar  
17 left ankle fracture.  
18

19 12. The Mt. Graham treating orthopedic Surgeon, Dr. Rex Bryce reduced  
20 the fracture and applied a hard splint, giving Plaintiff Tyler a stable reduction.  
21 Dr. Bryce told Tyler that treatment of his injury was urgent. Tyler stated he  
22 was a VA patient and follow-up treatment should be done by VA. Dr. Bryce  
23 stated he could not provide the urgently required treatment without VA  
24 authorization and would forward the records to the Safford VA Clinic that  
25 morning. Tyler agreed to follow up at the Safford Clinic as early as possible  
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28

1 the next day.

2 13. Early morning, June 6, Tyler visited the VA facility in Safford,  
3 Arizona, the staff confirmed the receipt of the records from Dr. Bryce. Tyler  
4 committed about Dr. Bryce's statement about the urgency for the necessary  
5 treatment of his fracture. Tyler was not scheduled or allowed to see a Doctor  
6 that morning. Following that visit Tyler made daily calls requesting, pain  
7 medications and expressing his concerns about the delays in treating his injury.  
8 Despite his pleas, he was not seen by the Safford VA Clinic doctors. Thursday  
9 morning, June 7, the staff member helping Mr. Tyler by phone, referring to her  
10 efforts to contact Tucson VA made this statement "They are not answering the  
11 phone". On or about Friday, June 8, the Safford VA Clinic informed Mr.  
12 Tyler an appointment had been made for Tuesday June 12. VA's negligence  
13 and deviation(s) in failing to provide Tyler timely follow-up consistent with  
14 any standard of care involving "high energy impact comminuted ankle  
15 fractures" contributed many weeks of additional hospitalization, many  
16 additional surgeries, and an extended recovery time in excess of one year and  
17 caused or contributed to a poor outcome with lifetime complications that has  
18 affected his ability to pursue his trade and has adversely affected his marital  
19 relationship and mental wellbeing.

20 14. Sunday, June 10, Mr. Tyler's pain was extreme and he was concerned  
21 about circulation in his injured leg. His wife, drove him to the Tucson VA  
22 emergency room, a 280-mile round trip. The ER physician declined removing  
23

1 the hard splint that had been applied on June 5<sup>th</sup> to exam Tyler's injury. The  
2 Doctor's exam was pinching the toenail of the exposed big toe of the injured  
3 leg and reporting the leg circulation was OK. No effort was made or x-rays  
4 taken to confirm the fracture reduction was still stable. Rather than admitting  
5 Tyler to the hospital the attending Doctor told Tyler go home and return for his  
6 June 12th clinic appointment. Not only did VA fail to provide timely treatment  
7 or provide permission for Tyler to obtain treatment from other providers, they  
8 sent him home when he sought help from the VA Medical Center Emergency  
9 Room. VA's Regional Counsel Mark Romaneski denial letter dated December  
10 3, 2014, *attached as Exhibit 2*, third paragraph, page 1, says that Mt. Graham  
11 Medical Center providers were responsible for not performing the surgery or  
12 transferring Tyler to another hospital for emergent surgery or notifying VA  
13 directly of the need for immediate care. Mr. Romaneski concludes the "VA is  
14 not responsible the negligence". VA's negligence was responsible for the 8-  
15 day delay in providing hospitalization for Tyler. VA's negligence and  
16 deviation(s) where not consistent with any standard of emergency room  
17 examinations or treatment of a patient with Tyler's injuries. Admitting Tyler to  
18 the hospital at that time would have mitigated over 500 miles of travel, pain  
19 and suffering that contributed negatively to Plaintiff Tyler's treatments and  
20 recovery. The treatment Tyler received at the VA Emergency is not  
21 consistent with current or historical patient care.

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26 15. A letter from Dr. Jorden Smith, University of Arizona Orthopedic  
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1 Trauma Surgeon *attached as Exhibit 3*, and a letter from Orthopedic Surgeon  
2 Dr. Rex Bryce, *attached as Exhibit 4*, in response to statements in Mr.  
3 Romaneski denial letter, *Exhibit 2* that were not factual (i.e. "Mr. Tyler was  
4 being treated by a VA trauma surgeon," To Dr. Smith's knowledge, Tucson  
5 VA Medical Centers has never had an Orthopedic Trauma Surgeon). In Dr.  
6 Bryce and Dr. Smith's expert opinion, the findings, statements and opinions in  
7 the letter of denial are not consent with current or historical orthopedic fracture  
8 standards of care. Dr. Smith MD, Orthopedic *Trauma* Surgeon, is the Section  
9 Head of the Department of Orthopedic Surgery, Clinical Associate Professor,  
10 University of Arizona. His specialty is ankle and leg fractures, reconstructive  
11 Surgery, Orthopedic Trauma. Dr. Rex Bryce is an orthopedic surgeon in  
12 Safford, Arizona. He received his medical degree from Mayo Clinic School of  
13 Medicine and has been in practice for more than 20 years.

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16  
17 **Demand**

18 WHEREFORE, Plaintiff, Roy Wayne Tyler, does hereby pray that judgment be  
19 entered in his favor and against the Defendant in the amount of Three Hundred  
20 Thousand Dollars (\$300,000.00) for damages as follows;

21  
22 (1) For medical expenses, lost wages, pain and suffering, future impairment,  
23 and loss of enjoyment of life in an amount to be determined at trial;

24 (2) For costs incurred, with interest at the highest lawful rate on the total of all  
25 sums awarded from the date of judgement until paid. Attorney's fees, if any incurred  
26 in this civil action, together with such further and additional relief at law or in equity  
27

1 that this Court may deem proper.

2 (3) For the fair and reasonable monetary value of Plaintiff Tyler's direct and  
3 proximate results of Defendant's negligence. Plaintiff Tyler sustained serious and  
4 permanent personal handicaps in and about his left leg also resulting in nerve damage  
5 causing chronic peripheral neuropathy. For future incurred medical expenses, and  
6 other damages. For the past, present, and future pain, suffering and mental anguish he  
7 has and is forced to endure for the rest of his life. For the damage and strain on his  
8 material life. The Plaintiff wants a trial by jury.  
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14 Dated: 09/05/2017



15 Signature of Pro Se Plaintiff  
16 Roy Wayne Tyler  
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18 Klamath Falls, Oregon 97601  
19 (928) 941-1079  
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